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Area-Based Audit of Forest Planning and Practices and Enforcement of the Forest Practices Code in a Portion of the Kispiox Forest District

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Report from the Board

A. Report from the Board

This is the Board's report on the area-based audit of licensees' compliance with, and government's enforcement of, the *Forest Practices Code of British Columbia Act* and related regulations (the Code), in the western portion of the Kispiox Forest District (see map on page A-6). As of April 1, 2003, the Kispiox Forest District was incorporated into the new Skeena Stikine Forest District.

The audit examined field activities and obligations of the following parties for the period of July 1, 2001, to July 25, 2002, to determine compliance with Code requirements:

- Kispiox Forest District, including responsibilities of both the Small Business Forest Enterprise Program (SBFEP, now the BC Timber Sales Program) and the district manager
- Bell Pole Company
- C GED Forest Products Ltd.
- Canema Timber Ltd.
- Kipiox Forest Products Ltd.
- Kitwanga Lumber Co. Ltd.
- Skeena Cellulose Inc. (now New Skeena Forest Products Inc.)
- Five woodlot tenure operators

The audit also examined the appropriateness of government's enforcement of the Code, including planning, management direction and operational activities related to enforcement, for the period July 1, 2001, to July 25, 2002. The activities of two Code enforcement agencies, the Ministry of Forests (MOF) and the Ministry of Water, Land and Air Protection (MWLAP) were examined. There were no activities within the audit area for which the Ministry of Energy and Mines had enforcement responsibilities.

The reports from the auditor (Part C and D) provide further details on the location, the scope of the audits and the audit findings. The report from the auditor in Part C is based on the audit procedures described in Part B.[i]

Before completing this report, the Board considered written representations from Canema Timber Ltd., New Skeena Forest Products Inc., the Skeena Stikine Forest District and MWLAP,

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[i] Part B of this document provides background information on the Board's audit program and the process followed by the Board in preparing its report.

as required by section 182 of the *Forest Practices Code of British Columbia Act*. Although offered the opportunity, no representations were received from C GED Forest Products Ltd.

The Board also considered the reports from the auditor, along with supporting audit evidence. Based on its analysis of this information, the Board affirms the audit reports and provides the following conclusions.

Conclusions

I. Compliance with the Forest Practices Code

The Board understands that the operators and licensees are working in an area that has historically produced lower-value timber, and that this hardship has been compounded by an economic downturn resulting in sporadic forest operations in the region during the past few years. During the audit period, harvesting activities accounted for approximately 25 percent of the allowable annual harvest.

The Board commends the performance of several auditees—including Bell Pole Company, Kitwanga Lumber Ltd., five woodlot operators and the SBFEP—who complied in all significant respects with the requirements of the Code. In particular, the Board notes the superior road construction program undertaken by the SBFEP in the audit area.

However, of the seven licensees audited, three had significant non-compliances with requirements of the Code. These are:

1. C GED Forest Products Ltd., for which the audit found significant non-compliance with road construction, road maintenance and silviculture activities;
2. Canema Timber Ltd., for which the audit found significant non-compliance with road maintenance requirements; and,
3. Skeena Cellulose Inc., for which the audit also found significant non-compliance with road maintenance requirements.

The Board is encouraged that, in their representations, both Canema Timber Ltd. and New Skeena Forest Products Inc. identified planned actions to remediate the concerns found in the audit.

The Board is concerned that the level of non-compliance in the audit area is relatively high, given the low level of forestry activity taking place. The Board notes that forestry obligations remain during economic downturns, regardless of the level of forestry activity taking place.

Recommendations

As provided by section 185 of the *Forest Practices Code of British Columbia Act*, the Board makes the following recommendations:

1.a) That C GED Forest Products Ltd., Canema Timber Ltd., and New Skeena Forest Products Inc. conduct inspections of roads in the audit area under their responsibility, prepare an evaluation of the inspection results, and develop action plans to remedy any risks to persons or the environment. The Board also recommends these licensees ensure that road maintenance is undertaken on a timely basis. C GED should also complete the required work to comply with its silviculture obligations.

b) That the Skeena Stikine Forest District monitor the road maintenance and silviculture activities of C GED Forest products Ltd., and the road maintenance of Canema Timber Ltd., and New Skeena Forest Products Inc. within its routine compliance and enforcement operation.

In accordance with section 186 of the Act, the Board requests that the evaluations and action plans in recommendation 1 a) be delivered to the Skeena Stikine Forest District, with a copy to the Board, by October 31, 2003. The Board also requests that the Skeena Stikine Forest District advise the Board of all actions taken by the licensees to address recommendation 1 a) by May 31, 2004.

II. Enforcement of the Forest Practices Code

The report from the auditor of record (Part D) concludes that the Ministry of Forests is appropriately enforcing several aspects of the Code in the audit area. However, the Board is concerned with two instances of significant weakness identified by the audit. The auditors found that the district was not concluding investigations in a timely manner, and senior officials were not making determinations on alleged contraventions in a timely manner.

The auditor of record informed the Board that the district did not establish timelines to complete investigations or make determinations in a timely manner. One licensee being investigated for contravening the Code entered bankruptcy proceedings and ceased to exist prior to the district completing its investigations. In a case of road construction, it took more than two years to complete the information package to be presented to the senior official for determination. And, although two cases were brought before the Kispiox district manager for determination, senior officials made no determinations for non-compliances with the Code during the audit period. The absence of timely investigations and determinations is such that a prime objective of the Code's enforcement provisions—the public's expectation of licensee's compliance with the Code and the levy of an appropriate penalty in situations of non-compliance—will not be achieved.

The importance of timely administrative determinations is supported in legal precedence. In a June 7, 1996, ruling on an illegal harvest situation, the Forest Appeals Commission concluded

"the purpose of the administrative remedies division of the Code is to achieve these goals, i.e., effective sanctions, certainty of outcome and swift, sure response to those found contravening provisions of the Code" [FAC, Appeal No. 96-05(b)]. The Board believes that, in a results-based regulatory environment, a timely, efficient and effective system of administrative determinations will be increasingly important.

The Skeena Stikine Forest District, in its representation to the Board, set out a plan to address the weaknesses identified by the Board audit, and included the following commitments:

> "Compliance and Enforcement Branch recognizes the need for a provincial policy establishing appropriate timelines for completing investigations and determinations, and will develop a policy during the 2003-2004 fiscal year."

The Board approves of the commitments made by the Skeena Stikine Forest District in its representations, and urges the full implementation of the commitments—including the establishment of timelines for completing investigations and determinations.

Recommendation

As provided by section 185 of the Act, the Board makes the following recommendation:

2. That the Ministry of Forests complete its development and implementation of policies establishing timelines for the completion of investigations and determinations related to possible contraventions of the *Forest and Range Practices Act*.

In accordance with section 186 of the Act, the Board requests that the Ministry of Forests provide the Board with a copy of the policy and any related implementation plan by March 31, 2004.

Also of concern to the Board is the apparent inability of the MOF district office to take action in the case of bankruptcy of a licensee. When a licensee fails to meet its road maintenance or silviculture obligations as a result of economic hardships, there may be an increase in both environmental risk and liability for the Crown. That is, the public may be left to bear both the environmental and economic costs of the unfulfilled obligations.

In its representation to the Board, the forest district committed to preparing a complete inventory of ongoing Code obligations in the Kispiox Timber Supply Area that have not been fulfilled due to the current downturn in the forest industry. While endorsing this effort as worthwhile, the Board believes that the issue of responsibility for obligations when a licensee cannot or will not fulfill them is beyond the control of the district manager, and is therefore a provincial matter.

Recommendation

As provided by section 185 of the Act, the Board makes the following recommendation:

3. That the Minister of Forests develop and implement policies addressing the acceptance of statutory obligations in the event that a licensee is unable to pursue its obligations to fruition.

In accordance with section 186 of the Act, the Board requests that the Minister of Forests advise the Board of progress in developing the recommended policies by March 31, 2004.

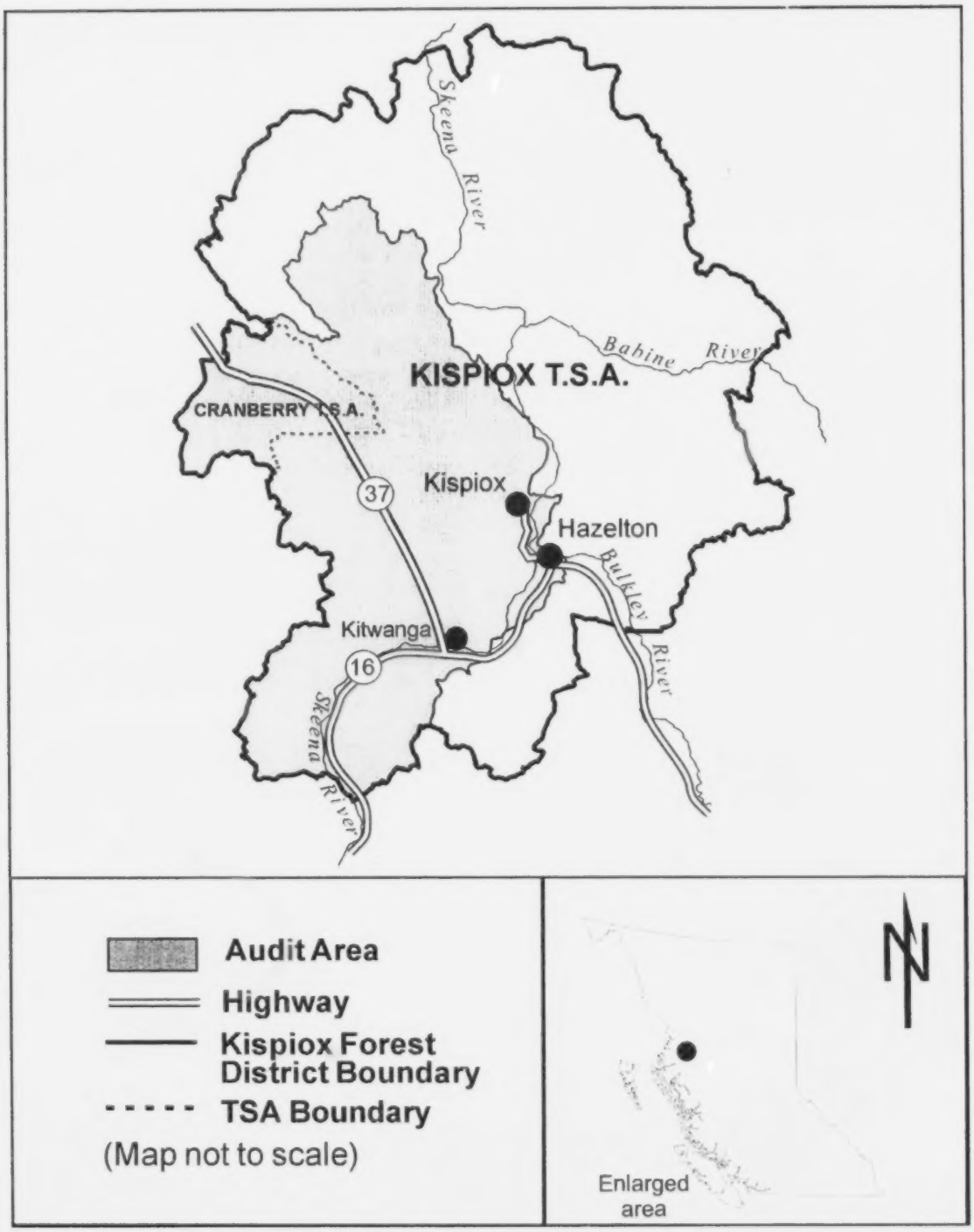
In the audit of MWLAP's enforcement activities, the auditor found that the ministry was not actively involved in Code enforcement within the audit area. MWLAP had not completed any compliance inspections and had not implemented effective joint compliance and enforcement processes with MOF. This conclusion is similar to findings in previous Board enforcement audits and is of concern to the Board. In the Board's view, MWLAP is not yet fulfilling its stated and legislated intent to be involved in Code enforcement. The Board will continue to assess MWLAP's enforcement role in future audits.

F. Lowenberger

Fred Lowenberger, MF, RPF
Board Member
Forest Practices Board

June 11, 2003

Kispiox Forest District Audit Area



Forest Practices Board Compliance Audit Process

B. Forest Practices Board Compliance Audit Process

Background

The Forest Practices Board conducts audits of government and agreement-holders for compliance with the *Forest Practices Code of British Columbia Act* and regulations (the Code). The Board has the authority to conduct these periodic independent audits under section 176 of the *Forest Practices Code of British Columbia Act*. Compliance audits examine forest planning and practices to determine whether or not they meet Code requirements.

Audit Standards

Audits by the Forest Practices Board are conducted in accordance with the auditing standards developed by the Board. These standards are consistent with generally accepted auditing standards.

The audits determine compliance with the Code based on criteria derived from the *Forest Practices Code of British Columbia Act* and its related regulations. Audit criteria are established for the evaluation or measurement of each practice regulated by the Code. The criteria reflect judgments about the level of performance that constitutes compliance with each requirement.

The standards and procedures for compliance audits are described in the Board's *Compliance Audit Reference Manual*.

Audit Process

Conducting an Area-Based Audit

Once the Board selects the area to be audited, the audit period and the staff and resources required to conduct the audit are determined. Board staff meet with the parties in the area being audited to discuss the logistics of the audit before commencing the work. The parties involved could be forest companies, oil and gas companies, woodlot owners or ranchers.

All the activities carried out during the period subject to audit are identified; for example, harvesting or replanting sites, and constructing or deactivating road sections. The items that make up each forest or range activity are referred to as a "population." For example, all sites harvested by a specific licensee form the "timber harvesting population" for that licensee. All road sections constructed by a specific licensee form the "road construction population" for that licensee. The populations are then sub-divided based on factors such as characteristics of the sites and potential severity of the consequences of non-compliance on the sites.

For each population of each licensee, the auditors choose the most efficient means of obtaining information to conclude whether there is compliance with the Code. For efficiency, auditors usually rely upon sampling to obtain audit evidence, rather than inspecting all activities.

Individual sites and forest or range practices within each population have different characteristics, such as the type of terrain, type of yarding or grazing levels. Each population for each licensee is divided into distinct sub-populations on the basis of common characteristics (e.g., steep ground vs. flat ground). A separate sample is selected for each population (e.g., the cutblocks selected for auditing timber harvesting). Within each population, more audit effort (i.e., more audit sampling) is allocated to the sub-population where the risk of non-compliance is greater.

Audit work in the field includes assessments from the air using helicopters and ground procedures, such as measuring specific features like road or riparian reserve zone width. The audit teams generally spend one to three weeks in the field.

Evaluating the Results

The Board recognizes that compliance with the many requirements of the Code is more a matter of degree than absolute adherence. Determining compliance, and assessing the significance of non-compliance, requires the exercise of professional judgment within the direction provided by the Board.

Auditors collect, analyze, interpret and document information to determine the audit results. The audit team, composed of professionals and technical experts, first determines whether forest practices are in compliance with Code requirements. For those practices considered to not be in compliance, the audit team then evaluates the degree to which the practices are judged not in compliance. The significance of the non-compliance is determined based on a number of criteria, including the magnitude of the event, the frequency of its occurrence and the severity of the consequences.

As part of the assessment process, auditors categorize their findings into the following levels of compliance:

Compliance – where the auditor finds that practices meet Code requirements.

Not significant non-compliance – where the auditor, upon reaching a non-compliance conclusion, determines that a non-compliance event, or the accumulation and consequences of a number of non-compliance events, is not significant and is not considered worthy of reporting.

Significant non-compliance – where the auditor determines that the event or condition, or the accumulation and consequences of a number of non-compliance events or conditions, is or has the potential to be significant, and is considered worthy of reporting.

Significant breach – where the auditor finds that significant harm has occurred, or is beginning to occur, to persons or the environment as a result of the non-compliance. A significant breach can also result from the cumulative effect of a number of non-compliance events or conditions.

Identification of a possible significant breach requires the auditor to conduct tests to confirm whether or not there has been a breach. If it is determined that a significant breach has occurred, the auditor is required by the *Forest Practices Board Regulation* to immediately advise the Board, the party being audited, and the Ministers of Forests, Energy and Mines, and Water, Land and Air Protection.

Reporting

Based on the above evaluation, the auditor then prepares the "Report from the Auditor" for submission to the Board. The parties being audited are given a draft of their portion of the report before it is submitted to the Board so that the party is fully aware of the findings. The auditee is also kept fully informed of the audit findings throughout the process, and is given opportunities to provide additional relevant information and to ensure the auditor has complete and correct information.

Once the auditor submits the report, the Board reviews it and determines if the audit findings may adversely affect any party or person. If so, the party or person must be given an opportunity to make representations before the Board decides the matter and issues a final report to the public and government. The representations allow parties that may potentially be adversely affected to present their views to the Board.

At the discretion of the Board, representations may be written or oral. The Board will generally decide on written representations, unless the circumstances strongly support the need for an oral hearing.

The Board then reviews the report from the auditor for each auditee and the representations from parties that may potentially be adversely affected before preparing its final report, which includes the Board's conclusions and, if appropriate, recommendations.

If the Board's conclusions or recommendations result in newly adversely-affected parties or persons, additional offers of representations would be required.

Once the representations have been completed, the reports are finalized and released: first to the respective auditees and then to the public and government.

Reports from the Auditor – Compliance Audits

C. Reports from the Auditor – Compliance Audits

1.0 Introduction

As part of its 2002 compliance audit program, the Forest Practices Board selected for audit an area made up of 14 draft landscape units in the Kispiox Forest District. The area-based audit examined the activities of all parties with responsibilities under the *Forest Practices Code of British Columbia Act* and regulations (the Code), including forest tenure holders, range tenure holders and resource agencies, as well as government Code enforcement activities. This report describes the results of the compliance audit.

The Kispiox Forest District was selected randomly from the forest districts within the Prince Rupert Forest Region, and the 14 landscape-unit areas were selected randomly to provide sufficient levels of forest activity for audit. The audit area covers about 42 percent of the Kispiox Forest District, approximately 570,000 hectares. This area contains the entire Cranberry Timber Supply Area (TSA) and a portion of the Kispiox TSA (see map on page A-6).

There are five forest licences in the audit area—Bell Pole Company (A16832), C GED Forest Products Ltd. (A48704), Kispiox Forest Products Ltd. (A16818), Kitwanga Lumber Co. Ltd. (A16833) and Skeena Cellulose Inc. (A16831). One replaceable timber sale licence held by Canema Timber Ltd. (A16860) is within the area as well. The Ministry of Forests' Small Business Forest Enterprise Program (SBFEP) and eight woodlot licences also had activities in the audit area. There are four range tenures in the audit area. An overview of the range areas was conducted and the low level of range activity did not warrant further examination.

The five forest licences and one replaceable timber sale licence are volume-based agreements within the Kispiox Forest District. The forest licences extend beyond the audit area, however only the activities under these licences within the audit area were examined. As a result of difficult economic circumstances in the local forest industry, there has been a low level of forestry activity within the audit area over the last couple of years. Harvesting in the audit area was about 105,000 cubic metres during the audit period. The allowable annual cut for the entire Kispiox TSA is 1.1 million cubic metres and 100,000 cubic metres for the Cranberry TSA. The annual harvest volume within the audit area would be approximately 400,000 cubic metres at normal levels.

The audit area is mountainous with broad river valleys and numerous fish streams. It includes portions of the Kispiox and Cranberry River drainages, and the bulk of the Skeena River drainage south of Hazelton. The area's forests are dominated by hemlock and subalpine fir. Spruce,

lodgepole pine, western red cedar, and amabilis fir are also commonly found.

Land use plan status

The Kispiox Land and Resource Management Plan (LRMP) was approved in 1996, and its resource management zones and objectives were declared a higher level plan[i] on September 18, 1996. The Kispiox LRMP applies to the Kispiox TSA, which is in the audit area. The audit area falls mainly in the general resource development zone, but also covers small portions of other zones. All of the forest activity subject to audit was within the general resource development zone. There is no higher level plan for the Cranberry TSA.

Draft landscape-unit boundaries have been defined, however there are no landscape-level plans or objectives established for the draft landscape units.

2.0 Licensee Reports

2.1 FL A16832—Bell Pole Company

2.1.1 Scope

The audit examined the activities and obligations of Bell Pole Company (Bell Pole) under Forest Licence (FL) A16832 related to operational planning (including the forest development plan[ii] and silviculture prescriptions[iii]); timber harvesting; silviculture; fire protection; and the construction, maintenance and deactivation of roads. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- construction of 1 road section totalling 0.15 kilometres
- maintenance of 25.7 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- permanent and semi-permanent deactivation of 5 road sections totalling 5.5 kilometres
- maintenance of 2 bridges
- planting on 1 cutblock
- brushing on 2 cutblocks
- regeneration obligations for 14 cutblocks
- free-growing obligations for 1 cutblock
- protection activities including fire-preparedness planning, fuel management and hazard abatement

These activities were approved in the Bell Pole 2001-2007 forest development plan.

Bell Pole did not carry out any timber harvesting activities in the audit area during the audit period.

Section 2.1.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002,* sets out the standards and procedures that were used to carry out this audit.

2.1.2 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- construction of 1 road section totalling 0.15 kilometres
- maintenance of 14 kilometres of road
- permanent and semi-permanent deactivation of 3 road sections totalling 4.6 kilometres
- maintenance of 2 bridges
- planting on 1 cutblock
- brushing on 1 cutblock
- regeneration obligations for 4 cutblocks
- free-growing obligations for 1 cutblock
- protection activities including fire-preparedness planning, fuel management and hazard abatement

The audit included assessing the 2001-2007 forest development plan and its consistency with higher level plan objectives. Only the portions of the forest development plan that applied to the audit area were examined.

Findings

The audit found that Bell Pole's forest planning and practices within the audit area complied, in all significant respects, with Code requirements for operational planning; road construction, maintenance and deactivation; silviculture; and fire protection.

2.1.3 Opinion

In my opinion, the operational planning; road construction, maintenance, and deactivation; silviculture; and fire protection activities carried out under FL A16832 by Bell Pole within the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

No opinion is expressed about Bell Pole's harvest activities because there were no harvest activities under FL A16832 from July 1, 2001, to July 25, 2002 in the audit area.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.1.1 and 2.1.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.2 FL A48704—C GED Forest Products Ltd.

2.2.1 Scope

The audit examined the activities and obligations of C GED Forest Products Ltd. (C GED) under FL A48704 related to operational planning (including the forest development plan and silviculture prescriptions); timber harvesting; silviculture; fire protection; and the construction, maintenance and deactivation of roads. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- harvesting of 6 cutblocks
- construction of 3 road sections totalling 3.2 kilometres
- maintenance of 63.8 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- maintenance of 1 bridge
- regeneration obligations for 3 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

These activities were approved in the C GED Forest Products Ltd. 2000-2004 forest development plan.

C GED did not carry out any road deactivation activities during the audit period.

Section 2.2.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.2.2 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- harvesting of 6 cutblocks and related silviculture prescriptions
- construction of 3 road sections totalling 3.2 kilometres
- maintenance of 19.7 kilometres of road
- maintenance of 1 bridge
- regeneration obligations for 2 cutblocks

- protection activities including fire-preparedness planning, fuel management and hazard abatement

The audit included assessing the 2000-2004 forest development plan and its consistency with higher level plan objectives. Only the portions of the forest development plan that applied to the audit area were examined.

Findings

The audit found that C GED's forest planning and practices within the audit area complied, in all significant respects, with Code requirements for operational planning, timber harvesting and fire preparedness planning.

It was not possible to examine C GED's compliance with Code requirements for fire tools and equipment during operations because the woodlands operations for this licence were inactive during the time of the field audit.

The audit identified a situation of significant non-compliance related to C GED's road construction.

The audit found that C GED's silviculture and road maintenance activities did not comply with Code requirements.

Silviculture obligations

The audit identified non-compliance relating to C GED's obligations for monitoring regeneration status and regenerating harvest areas within the timeframes prescribed in approved silviculture prescriptions.

On two areas examined with regeneration obligations due, C GED had not completed the required surveys to determine stocking status within the required time, and one area was not sufficiently re-stocked.

The non-compliance is significant because regenerating harvested areas is a fundamental obligation that licensees commit to in order to harvest Crown timber. Not complying with these obligations reduces the ability to establish free-growing stands within prescribed timeframes.

The areas of the Code to which the non-compliance relates are section 23 of the *Silviculture Practices Regulation* and section 70 of the *Forest Practices Code of British Columbia Act*.

Road maintenance obligations

The audit identified non-compliance relating to C GED's obligations to inspect and maintain roads, as required by the Code. Adequate road maintenance inspections had not been undertaken at an appropriate frequency, and repairs had not been carried out.

The audit identified numerous road maintenance problems throughout the road network examined, some of a long-standing nature. In one instance, a road located directly upslope of a fish stream was not stable due to tension cracks in the road prism. On several other road sections examined, drainage systems were not functioning adequately, and, in one case, there was erosion onto adjacent forest land.

C GED had not inspected these roads and, therefore, had neither identified the deficiencies, nor planned maintenance activities to address the deficiencies.

The non-compliance is significant because the lack of road inspections and maintenance activities increases the risk of sedimentation of streams and road failures.

The main area of the Code to which the non-compliance relates is section 18 of the *Forest Road Regulation*.

Road construction

The audit identified non-compliance with C GED's road construction. The non-compliance involved inadequate maintenance of drainage patterns and improper fuel management within riparian areas.

Several instances of inadequate drainage were identified on a newly constructed road, including a metal culvert that could not carry water because its intake was positioned too high, and a log culvert that was not sufficiently armoured, resulting in road material eroding into a stream.

The audit identified that C GED refuelled machinery within riparian management areas. Several fuel spills and empty fuel containers were observed within riparian management areas.

The non-compliance is significant because:

- inadequate drainage systems increase the risk of road failure and adverse impacts to the environment; and
- refueling in riparian areas increases the risk of adversely impacting riparian values.

The main areas of the Code to which the non-compliance relates are sections 12 and 13 of the *Forest Road Regulation*.

2.2.3 Opinion

In my opinion, except for the significant non-compliance described below, the operational planning; timber harvesting; road construction; and fire protection activities carried out under FL A48704 by C GED Forest Products Ltd. within the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

As described in section 2.2.2, the audit identified a situation of significant non-compliance involving road construction activities related to drainage structures and fuel management. On several sections of road, drainage systems were inadequate to maintain drainage patterns, and machinery had been refuelled in riparian areas, increasing the risk of adverse environmental impact.

In my opinion, the road maintenance and silviculture activities carried out under FL A48704 by C GED Forest Products Ltd. within the audit area, from July 1, 2001, to July 25, 2002, were not in compliance with the requirements of the Code as of July 2002.

As described in section 2.2.2, the audit identified that C GED's road maintenance and silviculture activities were not in compliance with the Code. Road inspections and maintenance activities, and silviculture inspections and activities, have not been carried out in accordance with Code requirements.

No opinion is expressed about C GED's road deactivation activities or fire-fighting tools and equipment during active operations.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.2.1 and 2.2.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.3 TSL (major) A16860—Canema Timber Ltd.

2.3.1 Scope

The audit examined the activities and obligations of Canema Timber Ltd. (Canema) under Timber Sale Licence (TSL) (major) A16860 related to operational planning (including the forest development plan and silviculture prescriptions); timber harvesting; silviculture; fire protection; and the construction, maintenance and deactivation of roads. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- harvesting on 1 cutblock
- maintenance of 12.2 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- layout of 2 road sections totalling 1.2 kilometres
- permanent deactivation of 1 road section totalling 0.7 kilometres
- regeneration obligations for 1 cutblock
- protection activities including fire-preparedness planning, fuel management and hazard abatement

These activities were approved in the Canema Timber Ltd. 1998-2002 forest development plan.

Section 2.3.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.3.2 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- harvesting on 1 cutblock
- maintenance of 7.9 kilometres of road
- permanent deactivation of 1 road section totalling 0.7 kilometres
- regeneration obligations for 1 cutblock

The audit included assessing the 1998-2002 forest development plan and its consistency with higher level plan objectives. Only the portions of the forest development plan that applied to the audit area were examined.

There was only one harvest operation and no road construction during the audit period, therefore protection activities were not assessed.

Findings

The audit found that Canema's forest planning and practices within the audit area complied, in all significant respects, with Code requirements for operational planning; timber harvesting; road construction and deactivation; and silviculture.

The audit identified a situation of non-compliance related to Canema's road maintenance obligations and activities.

Road maintenance

The audit identified that Canema's road inspection and maintenance program did not adequately identify or address road deficiencies. The audit identified several road sections that had not been adequately maintained, resulting in the erosion of road and ditch material and sediment transport. On one road section, several culverts were improperly placed, and some of these were plugged with sediment, greatly reducing the ability to maintain natural drainage.

The non-compliance is significant because the frequency of road deficiencies and the lack of road inspections and maintenance activities increase the risk of sedimentation of streams and road failures.

The main area of the Code to which the non-compliance relates is section 18 of the *Forest Road Regulation*.

2.3.3 Opinion

In my opinion, except for the significant non-compliance described below, the operational planning; timber harvesting; road maintenance and deactivation; and silviculture activities carried out under TSL (major) A16860 by Canema Timber Ltd., within the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

No opinion is expressed about Canema's fire protection activities.

As described in section 2.3.2 of this report, the audit identified a situation of significant non-compliance involving deficiencies in road inspection and maintenance practices. Road inspections and maintenance activities failed to identify and address a number of road deficiencies, as required by the Code. The lack of adequate inspections and maintenance activities increases the risk of adverse environmental impact.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.3.1 and 2.3.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.4 FL A16818—Kispiox Forest Products Ltd.

2.4.1 Scope

The audit examined the silviculture obligations of Kispiox Forest Products Ltd. (KFP) under FL A16818 for compliance with the Code. Obligations from July 1, 2001, to July 25, 2002, were examined. KFP had free-growing obligations for two cutblocks in the audit area during the audit period.

There were no activities related to operational planning; timber harvesting; fire protection; or the construction, maintenance and deactivation of roads during the audit period.

Section 2.4.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.4.2 Findings

The audit found that KFP complied, in all significant respects, with the Code requirement to achieve free-growing stands on the two cutblocks examined.

2.4.3 Opinion

In my opinion, Kispiox Forest Products Ltd. is in compliance, in all significant respects, with the Code obligation, as of July 2002, to achieve free-growing stands under FL A16818, in the audit area, from July 1, 2001, to July 25, 2002.

No opinion is expressed about KFP's operational planning; timber harvesting; fire protection; or the construction, maintenance and deactivation of roads.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.4.1 and 2.4.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.5 FL A16833—Kitwanga Lumber Co. Ltd.

2.5.1 Scope

The audit examined the activities and obligations of Kitwanga Lumber Company Ltd. (Kitwanga) under FL A16833 related to operational planning (including the forest development plan and silviculture prescriptions); timber harvesting; silviculture; fire protection; and the construction, maintenance and deactivation of roads. These activities were assessed for compliance with the Code. The period for which these activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- harvesting on 10 cutblocks
- construction of 33 road sections totalling 22.6 kilometres
- maintenance of 75.2 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- semi-permanent deactivation of 2 road sections totalling 3.6 kilometres
- maintenance of 1 bridge
- layout of 2 road sections totalling 3.1 kilometres
- brushing on 2 cutblocks
- regeneration obligations for 4 cutblocks
- free-growing obligations for 4 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

These activities were approved in the Kitwanga Lumber Company Ltd. 2000-2006 forest development plan.

Section 2.5.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.5.2 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- harvesting on 10 cutblocks
- construction of 6 road sections totalling 7.71 kilometres
- maintenance of 24.5 kilometres of road
- semi-permanent deactivation of 2 road sections totalling 3 kilometres
- maintenance of 1 bridge
- brushing on 1 cutblock
- regeneration obligations for 3 cutblocks
- free-growing obligations for 2 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

The audit included assessing the Kitwanga Lumber Company Ltd. 2000-2006 forest development plan and its consistency with higher level plan objectives. Only the portions of the forest development plan that applied to the audit area were examined.

Findings

The audit found that Kitwanga's forest planning and practices within the audit area complied, in all significant respects, with Code requirements for operational planning; timber harvesting; road construction, maintenance and deactivation; silviculture; and fire protection.

2.5.3 Opinion

In my opinion, the operational planning; timber harvesting; road construction, maintenance, and deactivation; silviculture; and fire protection activities carried out by Kitwanga Lumber Company Ltd. under forest licence A16833, within the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.5.1 and 2.5.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.6 FL A16831—Skeena Cellulose Inc.

2.6.1 Introduction

The harvesting rights under FL A16831, held by Skeena Cellulose Inc. (SCI), were transferred to NWBC Timber & Pulp Ltd. (NWBC) as a part of the sale of SCI to NWBC in April 2002. For approximately a year prior to the sale, SCI had substantially ceased its forestry operations—in particular, harvesting and road building activities. Despite the reduced activity, SCI continued to have obligations under the Code for road maintenance and silviculture activities.

2.6.2 Scope

The audit examined SCI's activities and obligations under FL A18631 related to operational planning (including the forest development plan and silviculture prescriptions); timber harvesting; silviculture; fire protection; and the construction, maintenance and deactivation of roads. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- harvesting on 1 cutblock
- construction of 1 road section totalling 5 kilometres
- maintenance of 362.7 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- maintenance of 37 bridges
- layout of 16 road sections totalling 11.8 kilometres
- brushing on 22 cutblocks
- regeneration obligations for 10 cutblocks
- free-growing obligations for 10 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

The activities were approved in the Skeena Cellulose Inc. 1998-2003 forest development plan.

SCI did not carry out road deactivation activities during the audit period.

Section 2.6.3 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.6.3 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- harvesting on 1 cutblock
- construction of 1 road section totalling 5 kilometres
- maintenance of 78.1 kilometres of road
- maintenance of 17 bridges
- brushing on 2 cutblocks
- regeneration obligations for 3 cutblocks
- free-growing obligations for 3 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

The audit included assessing the 1998-2003 forest development plan and its consistency with higher level plan objectives. Only the portions of the forest development plan that applied to the audit area were examined.

Findings

The audit found that SCI's forest planning and practices within the audit area complied, in all significant respects, with Code requirements for operational planning; timber harvesting; road construction; silviculture and fire protection.

The audit identified a situation of non-compliance related to SCI's road maintenance obligations and activities.

Road maintenance

The audit identified that SCI's road inspection and maintenance program within the audit area did not adequately ensure safe fish passage was provided at fish-stream crossings on roads maintained by SCI.

The audit examined five fish-stream crossings and, in four instances, safe fish passage had not been provided. On one road section examined, four streams (classified by default as fish bearing) had metal culverts in place that prevented fish passage.

The Code requires that streams be default-classified based on gradient if the absence of fish has not been proven by a fish inventory. The audit found that the majority of streams were default-classified by SCI as fish bearing.

The non-compliance is significant because the deficient road maintenance has adversely impacted fish habitat.

In response to the audit, SCI commissioned a fish inventory on the four streams discussed above. The inventory confirmed the presence of fish in two of the streams.

The main area of the Code to which the non-compliance relates is section 18(1)(d) of the *Forest Road Regulation*.

2.6.4 Opinion

In my opinion, except for the significant non-compliance described below, the operational planning; timber harvesting; road construction and maintenance; silviculture; and fire protection activities carried out under FL A16831 by Skeena Cellulose Inc., in the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

No opinion is expressed about SCI's road deactivation.

As described in section 2.6.3 of this report, the audit identified a situation of significant non-compliance involving inadequate maintenance of fish-stream crossings. SCI's road maintenance activities failed to provide safe fish passage at a number of fish stream crossings.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.6.2 and 2.6.3 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.7 Kispiox Forest District Small Business Forest Enterprise Program

2.7.1 Scope

The audit examined the activities and obligations of the Kispiox District Small Business Forest Enterprise Program (SBFEP) related to operational planning (including the forest development plan and silviculture prescriptions); timber harvesting; silviculture; fire protection; and the construction, maintenance and deactivation of roads. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- harvesting on 7 cutblocks
- construction of 11 road sections totalling 19.8 kilometres
- maintenance of 271.5 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- maintenance of 17 bridges
- layout of 47 road sections totalling 101.2 kilometres
- planting on 17 cutblocks
- brushing on 17 cutblocks
- regeneration obligations for 14 cutblocks
- free-growing obligations for 4 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

These activities were approved in the SBFEP's 1999-2008 forest development plan.

The SBFEP did not carry out road deactivation activities during the audit period.

Section 2.7.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.7.2 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- harvesting on 7 cutblocks
- construction of 10 road sections totalling 12.8 kilometres
- maintenance of 66 kilometres of road
- maintenance of 6 bridges
- planting on 2 cutblocks
- brushing on 4 cutblocks
- regeneration obligations for 4 cutblocks
- free-growing obligations for 2 cutblocks

The audit included assessing the 1999-2008 forest development plan for compliance with the Code and its consistency with higher level plan objectives.

There were no active operations at the time of the audit; therefore, fire protection activities could not be assessed.

Findings

The audit found that the Kispiox Forest District SBFEP's forest planning and practices within the audit area complied, in all significant respects, with Code requirements for operational planning; timber harvesting; road construction, maintenance and deactivation, and silviculture.

2.7.3 Opinion

In my opinion, the operational planning; timber harvesting; road construction and maintenance; and silviculture activities carried out by the Kispiox District Small Business Forest Enterprise Program in the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

No opinion is expressed about the SBFEP's fire protection activities or road deactivation.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.7.1 and 2.7.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

2.8 Government Obligations

2.8.1 Scope

The audit examined government activities and obligations in the Kispiox Forest District related to road maintenance and silviculture. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations in the audit area during the audit period, and therefore subject to audit, were:

- maintenance of 144.7 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- maintenance of 20 bridges

There were no government silviculture activities or obligations in the audit area.

Section 2.8.2 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

2.8.2 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- maintenance of 68.3 kilometres of road
- maintenance of 3 bridges
- the inspection records for all bridges

Findings

The audit found that the Kispiox Forest District's road maintenance activities within the audit area complied, in all significant respects, with Code requirements.

2.8.3 Opinion

In my opinion, the road maintenance activities carried out by the Kispiox Forest District in the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 2.8.1 and 2.8.2 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

3.0 Other Licences

3.1 Woodlots

3.1.1 Introduction

There are eight woodlot licences within, or partly within, the audit area—woodlot licences 131, 134, 135, 136, 137, 138, 140 and 1449. Five were selected for audit—woodlot licences 134, 136, 137, 138 and 140.

3.1.2 Scope

The audit examined woodlot licencees' activities in the areas of operational planning (including forest development plans and silviculture prescriptions); timber harvesting; silviculture; fire protection; and road construction, maintenance and deactivation. These activities were assessed for compliance with the Code. The period for which activities were examined was July 1, 2001, to July 25, 2002.

The activities and obligations within the audit area during the audit period, and therefore subject to audit, were:

- harvesting on 8 cutblocks
- construction of 3 road sections totalling 2.6 kilometres
- maintenance of 10 kilometres of road, involving activities such as road surfacing and cleaning culverts and ditches
- planting on 6 cutblocks
- brushing on 3 cutblocks
- protection activities including fire-preparedness planning, fuel management and hazard abatement

These activities were approved in the following woodlot licencees' forest development plans.

Licence Number	Forest Development Plan
WL 134	1996 - 2002
WL 136	2000 - 2004
WL 137	1999 - 2003
WL 138	1997 - 2002
WL 140	2000 - 2004

There were no road deactivation activities under the woodlot licences.

Section 3.1.3 describes the audit of these activities and the audit results. The Board's audit reference manual, *Compliance Audit Reference Manual, Version 5.1, May 2002*, sets out the standards and procedures that were used to carry out this audit.

3.1.3 Findings

Planning and practices examined

The audit work on selected roads and cutblocks included ground-based procedures and assessments from the air using a helicopter. The audit examined:

- harvesting on 7 cutblocks
- construction of 3 road sections totalling 2.6 kilometres
- maintenance of 10 kilometres of road
- planting on 2 cutblocks
- brushing on 1 cutblock

The audit included assessing the forest development plans for WL 134, 136, 137, 138 and 140 for compliance with the Code, including consistency with higher level plan objectives.

Given the low risk associated with the small size of individual woodlot activities, fire protection activities were not examined.

Findings

The audit found that the woodlot licencees' forest planning and practices complied, in all significant respects, with Code requirements for operational planning; timber harvesting; silviculture; and road construction and maintenance activities.

3.1.4 Opinion

In my opinion, the operational planning; timber harvesting; road construction and maintenance; and silviculture activities carried out by woodlot licensees under woodlot licences 134, 136, 137, 138 and 140, in the audit area, from July 1, 2001, to July 25, 2002, were in compliance, in all significant respects, with the requirements of the Code as of July 2002.

No opinion is expressed about the woodlot licensees' protection activities or road deactivation.

In reference to compliance, the term "in all significant respects" recognizes that there may be minor instances of non-compliance that either may not be detected by the audit, or that are detected but not considered worthy of inclusion in the audit report.

Sections 3.1.2 and 3.1.3 of this report from the auditor describe the basis of the audit work performed in reaching the above opinion. The audit was conducted in accordance with the auditing standards of the Forest Practices Board. Such an audit includes examining sufficient forest planning and practices to support an overall evaluation of compliance with the Code.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
March 25, 2003

[i] A higher level plan is a forest resource management objective that is established as legally binding by a written order. The objective applies to a resource management zone, landscape unit, sensitive area, recreation site, recreation trail, or interpretive forest site. Higher level plans are a provision of the *Forest Practices Code of British Columbia Act* that give direction to operational plans.

[ii] A forest development plan is an operational plan that provides the public and government agencies with information about the location of proposed roads and cutblocks for harvesting timber over a period of at least five years. The plan must specify measures that will be carried out to protect forest resources. It must also be consistent with any higher level plans. Site-specific plans are required to be consistent with the forest development plan.

[iii] A silviculture prescription is a site-specific operational plan that describes the forest management objectives for an area to be harvested (a cutblock). The silviculture prescriptions examined in the audit are required to describe the management activities proposed to maintain the inherent productivity of the site, accommodate all resource values, including biological diversity, and produce a free-growing stand capable of meeting stated management objectives. Silviculture prescriptions must be consistent with forest development plans that encompass the area to which the prescription applies.

Report from the Auditor – Enforcement Audit

D. Report from the Auditor – Enforcement Audit

1.0 Introduction

As a part of its 2002/2003 audit program, the Forest Practices Board selected an area in the western portion of the Kispiox Forest District for audit. The area-based audit examined the activities of all parties with responsibilities under the *Forest Practices Code of British Columbia Act* and regulations (the Code), including forest tenure holders and resource agencies, as well as government agencies with Code enforcement responsibilities.

This report describes the audit of government's enforcement of the Code, including activities such as tracking, inspecting and reporting licensees' forest activities and taking action, where necessary, to address non-compliance with the Code.

Section 176(b) of the Code mandates the Board to carry out periodic independent audits of the appropriateness of government enforcement under the Code. Three ministries have authority under the Code for enforcement: Ministry of Forests (MOF); Ministry of Water, Land and Air Protection (MWLAP); and Ministry of Energy and Mines (MEM).

The Kispiox Forest District was selected randomly from the forest districts in the Prince Rupert Forest Region, and not on the basis of location or level of performance. The district was divided into two areas containing sufficient levels of forest activities for audit, and the audit area was selected randomly. The audit area consists of 14 draft landscape units and 570,000 hectares, about 43 percent of the Kispiox Forest District. This area contains the entire Cranberry Timber Supply Area (TSA) and a portion of the Kispiox TSA (see map on page A-6).

There has been little forestry activity within the audit area over the last couple of years as a result of difficult economic circumstances in the local forest industry. Harvesting in the audit area was about 105,000 cubic metres during the audit period. The allowable annual cut for the entire Kispiox TSA is 1.1 million cubic metres and 100,000 cubic metres for the Cranberry TSA. The annual harvest volume within the audit area would be approximately 400,000 cubic metres at normal levels.

The audit area is mountainous with broad river valleys and numerous fish streams including portions of the Kispiox and Cranberry River drainages and the bulk of the Skeena River drainage south of Hazelton. Forests are dominated by hemlock and sub-alpine fir. Spruce, lodgepole pine, western red cedar, and amabilis fir are also commonly found.

Land Use Plan Status

The Kispiox Land and Resource Management Plan (LRMP) was approved in 1996 and its resource management zones and objectives were declared a higher level plan on September 18, 1996. The Kispiox LRMP applies to the Kispiox TSA, which is in the audit area. The audit area is mainly in the LRMP's general resource development zone. All of the forest

activity subject to audit was also located within the general resource development zone. There is no higher level plan for the Cranberry TSA.

Draft landscape unit boundaries have been defined, however there are no landscape-level plans or objectives established for the draft landscape units.

2.0 Audit Scope and Approach

The audit examined government's planning, management direction and operational activities related to enforcement of the Code, for the period July 1, 2001, to July 15, 2002.

Audit Criteria

The audit assessed three broad aspects of government enforcement: the design of the compliance and enforcement (C&E) organization and business processes; their application in practice (through sampling both compliance and enforcement 'transactions' in a number of areas, such as compliance inspections); and the management framework used to direct, support, monitor and report on C&E activity.

The following main assessment criteria were used:

- Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement.
- Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.
- Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.
- Investigations and determinations are carried out in all applicable situations and only when warranted. They are performed in a fair, objective and consistent way, and are accurately recorded and reported.
- Agencies establish, through operational plan approval and related processes, expectations for forest practices that are enforceable and in accordance with the Code.
- There are established organizational structures, policies and processes that contribute to and support appropriate enforcement of the Code.
- The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.
- Reporting systems provide adequate information on agency performance in relation to enforcement objectives.

Candidate Activities

The forest activities carried out during the audit period, and therefore subject to government enforcement, were:

- harvesting of 33 cutblocks
- construction of 52 sections of road totalling approximately 53 kilometres
- maintenance of approximately 965 kilometres of forest road, including 78 bridges
- deactivation of 8 sections of road totalling approximately 10 kilometres
- planting and regeneration obligations on 70 cutblocks
- brushing of 46 cutblocks
- free-growing obligations on 21 cutblocks
- fire-protection requirements during forest operations

The Ministry of Forests' compliance and enforcement activities carried out during the audit period, and therefore subject to audit, included:

- the design of the C&E organization and business processes;
- the planning, conduct, recording and reporting of C&E activity; and
- the systems and processes used to manage C&E activity.

The Ministry of Water, Land and Air Protection's approach to Code enforcement does not involve a C&E organization, a program of compliance inspections of forest activities, or systems to record and report C&E activity. Considerable reliance is placed on MOF. The audit examined the appropriateness of this arrangement in relation to MWLAP's responsibilities for water, fish and wildlife values.

There was no activity within the audit area during the audit period for which the Ministry of Energy and Mine's had enforcement responsibilities.

Audit Work and Activities Examined

The audit work included:

- interviewing MOF and MWLAP staff and management
- reviewing and evaluating agency policies, processes and controls
- office-based procedures on a wide selection of MOF C&E inspections
- consideration of the results of the compliance auditor's detailed field examination of forest activities in the audit area, in relation to C&E activity associated with these activities

- seeking input from all licensees in the audit area through a written survey
- interviewing select licensees

3.0 Overall Conclusions

The audit examined the C&E organization and activities of the two government agencies with Code enforcement responsibilities for the western portion of the Kispiox Forest District for the period July 1, 2001, to July 15, 2002.

Although both MOF and MWLAP have Code enforcement authority and responsibilities in the Kispiox district, in practice, MOF has primary responsibility for Code enforcement activities. MWLAP's role in Code enforcement is in helping MOF establish appropriate expectations for forest practices.

Ministry of Forests

The Ministry of Forests is appropriately enforcing several aspects of the Code in the Kispiox district and has an established strength in its review and validation of licensees' operational plans.

The district is establishing clear and enforceable expectations for forest practices, is conducting sufficient inspections of harvesting and road construction activities, and is appropriately addressing contraventions of the Code of a less serious nature (i.e., contraventions that have not harmed the environment in any major way, such as the operation of a machine in a designated machine-free zone or the requirement to rehabilitate disturbed areas).

However, there are two significant weaknesses in the district's C&E program. The district is not concluding its investigations, and senior official determinations are not forthcoming, in a timely enough fashion for alleged contraventions that are of a more serious nature (i.e., contraventions that have caused adverse impacts to the environment, such as improper road construction causing a road failure or the construction of a road in a riparian reserve), and the district has not appropriately prioritized its C&E activities.

The Code assigns considerable authority to district managers through their designation as senior officials under the Code. They have authority to make determinations on whether persons have contravened the Code, and to levy penalties within maximum levels prescribed by regulation. Senior officials, thereby, have important responsibilities related to the discharge of this authority, such as establishing clear and reasonable expectations for the function of the C&E program for which they are responsible, and the fair and equitable application of administrative remedies.

A primary purpose of senior officials' empowerment under the Code is to enable government to achieve the public's expectation for compliance with the Code—and appropriate penalties in situations of non-compliance—in an expedient manner without lengthy and costly legal

proceedings. The lack of timely administrative remedies by the Kispiox district is not consistent with this purpose.

The district failed to establish reasonable expectations for forest officials conducting investigations of alleged contraventions, which contributed to undue lengthy delays in investigations. And, for two investigations that were concluded, determination processes were not carried out in a timely-enough manner, resulting in further delays.

The district also did not appropriately establish priorities for its compliance inspections and had not implemented ministry procedures for inspection planning. As a result, forest officials' C&E activities were not appropriately prioritized and significant non-compliance with the Code was not detected or prevented—specifically related to several licensees' failure to inspect and maintain forest roads.

In several situations, licensees being investigated for contravening the Code went bankrupt and ceased to exist prior to the district completing its investigations. The significant downturn in the forest industry in the Kispiox district was a major hindrance to the district's ability to appropriately enforce the Code. At least two forest companies declared bankruptcy during the period of the audit.

There remains a real concern that situations exist in which environmental risks created by past forest activities of bankrupt companies have not been sufficiently addressed.

Ministry of Water, Land and Air Protection

The Ministry of Water, Land and Air Protection has removed itself from Code compliance and enforcement activities. During the period of the audit, the MWLAP forest ecosystem specialist (FES) was transferred from the Kispiox Forest District office to MWLAP's Smithers office, and reviews of licensees' operational plans were ceased.

MWLAP indicated that it would be establishing best management practices to serve as guidance to forest licensees and MOF senior officials, however these practices would not be a legislated requirement under the Code.

4.0 Findings And Conclusions

The detailed findings and conclusions of the audit are set out in this section, by assessment criterion.

4.1 Audit criterion – Government agencies obtain, use and maintain adequate information on the forest activities subject to compliance and enforcement.

In order to undertake compliance and enforcement activities with any assurance as to whether the right activities are being examined, the ministries must be informed of the forest activities taking place in the district and any licensee obligations under the Code. If the ministries do not

know about all harvesting, road and silviculture activities and obligations, there is little chance that the applicable licensee activities will be inspected, and there is an increased chance that non-compliance with the Code will be missed.

The audit assessed whether the government agencies in the district have systems in place whereby sufficient information about forest activities is obtained, used and maintained to enable an effective program of periodic inspections.

MWLAP is not informed of forest activities taking place in the Kispiox district. Although the FES position at MWLAP's Smithers office reviews and provides comments on licensees' proposed forest development plans, information is not tracked about the timing or completion of forest activities carried out.

MOF obtains information about forest activities from various sources. The primary sources are the forest officials' knowledge of activities within his or her zone, and operational plans and cutting permits routed through C&E staff. Each cutting permit includes a clause requiring two weeks advanced notification of the commencement of operations.

There is a gap in the information tracked by MOF forest officials about road construction activities by contractors working under the Small Business Forest Enterprise Program (SBFEP). These roads, which are not part of a timber sale licence, are not tracked or inspected by the forest officials. Rather, district SBFEP staff oversee the road construction through their supervisory capacity. Despite this gap, the results of the Board's compliance audit indicate that roads constructed by the SBFEP complied with the Code and were constructed to a high standard of care.

For harvesting activities on some private land, there is a risk of trespass onto adjacent Crown land and financial loss to the Crown. The district has implemented a process for tracking markholder agreements and forwarding them to C&E staff. This provides information about private land harvesting where wood is being transported, as all wood being transported requires a markholder agreement. The district is therefore able to plan and conduct inspections of private land activities that are considered high risk.

The information on harvesting and road construction activities is maintained by each forest official in field binders. The information tracked in the field binders includes the status of activities, results of prior inspections, follow-up actions required and relevant plans and permits.

For road maintenance activities, the district is not sufficiently informed of licensees' road inspection and maintenance obligations or activities, and district processes for planning inspections of road maintenance obligations and activities are not adequate. This weakness is discussed further in the next section.

For silviculture obligations and activities, MOF's silviculture information system (ISIS) is monitored by the silviculture officer. Obligation dates are obtained from approved silviculture prescriptions and entered into the system by MOF staff. Licensees then report silviculture

activities undertaken. The silviculture officer monitors ISIS for obligations due and achieved, and uses this information in planning an annual audit of silviculture obligations and activities.

Conclusions

MWLAP is not informed of forest activities taking place.

The MOF district C&E program has adequate knowledge of the locations and timing of harvesting and road construction activities. Improvement is required in order for C&E to ensure sufficient inspections of roads constructed under contract by the SBFEP.

The district forest officials do not maintain sufficient information about licensees' road maintenance activities, including road inspections.

The district's model for tracking silvicuture obligations and activities is adequate, but only to the extent that licensees report silviculture information in a timely manner and the ISIS system is kept up to date. The audit did not assess these aspects of the ISIS system.

4.2 Audit criterion – Government agencies have an effective way of identifying risks associated with forest activities and utilizing risk in inspection planning.

Once government agencies have determined the forest activities eligible for inspection, they need an effective method of determining where to place their inspection efforts. Because they cannot inspect all forest activities conducted by all licensees, they need a way to allocate their resources to minimize the risk that impacts to the environment are not detected.

The audit assessed whether government has an effective process for identifying risk and whether it uses information on risk to focus inspection efforts on areas with higher risk of environmental impact from forest activities.

MWLAP does not have a program of periodic inspections of forest activities and, therefore, does not utilize risk in inspection planning. MWLAP has the ability to provide input into MOF's risk assessment processes, but does not do so.

Inspection Planning and Prioritization

In 2001, MOF's C&E branch issued formal compliance procedures, establishing inspection planning procedures for all forest districts' C&E programs. The procedures are comprehensive and include a requirement for districts to prepare inspection plans setting out their inspection priorities and objectives.

The Kispiox district prepared a draft inspection plan in accordance with the compliance procedures. However, the plan was not approved by the district manager prior to the end of the fiscal year, and was not implemented.

In establishing its inspection priorities for the year, the district did not adequately consider the additional risk associated with continuing Code obligations, in light of the industry downturn.

As a result, inspection priorities were not well reasoned and the district did not adequately address the increased risk that ongoing Code obligations would go unfulfilled.

During periods of significant industry downturn, the risk associated with ongoing Code obligations increases—obligations such as the requirement for licensees to conduct inspections of forest roads, whether being used or not, and to maintain roads in an environmentally sound condition.

Due to economic difficulties in the local forest industry, the harvesting level in the district was about 25 percent of the normal level. Rather than prioritizing compliance inspections to ensure the fulfillment of Code obligations, the district instead decided to double the minimum number of inspections required for harvesting and road construction activities.

Of the five major licensees' road maintenance activities examined by the Board compliance audit, three were found to be in significant non-compliance with Code requirements to inspect and maintain forest roads. The non-compliance mostly related to a failure by the licensees to properly inspect forest roads, maintain road drainage systems, and ensure continued safe fish passage at fish-stream crossings.

The purpose of inspection planning, as set out in MOF's compliance procedures, is to:

- prioritize activities for inspection;
- manage risk across activities by allocating inspection resources; and
- provide guidance to staff conducting inspections.

The absence of an inspection plan contributed to the failure to detect or prevent the non-compliance with road maintenance obligations, and the district thereby has not appropriately managed risk. As well, forest officials responsible for conducting inspections had little guidance on which to prioritize their inspections.

For silviculture, the district silviculture officer conducts an annual audit of silviculture activities and obligations, which includes the preparation of an audit plan. The audit plan considers the level of risk associated with each silviculture activity and each licensee, as well as the results of prior years' audits in determining audit priorities.

The Board compliance audit identified one licensee that had failed to adhere to its Code obligation to regenerate harvested cutblocks. In this instance, the non-compliance had been detected by the district's silviculture audit and appropriate enforcement action had been initiated.

Site-Level Risk Assessment

MOF's compliance procedures include a requirement to assess risk associated with specific sites selected for inspection (site risk). The procedures include consideration of environmental values and prescribed management practices.

The audit confirmed that forest officials are appropriately assessing site risk when preparing for compliance inspections.

Conclusions

MWLAP does not participate in Code risk assessment and inspection planning processes.

Although, the MOF compliance procedures establish comprehensive inspection planning and risk assessment processes, the Kispiox district has not appropriately implemented the procedures. The district did not adequately consider the risk that licensees do not comply with ongoing Code obligations in establishing its inspection priorities.

Forest officials are appropriately considering environmental risks when preparing for site inspections.

For silviculture activities and obligations, the district's annual audits appropriately consider risk in prioritizing and conducting inspections, and are a strength of the district's C&E program.

4.3 Audit criterion – Government agencies conduct a sufficient number of inspections, in a fair, objective and effective way, and accurately record and report results.

The effective conduct of inspections enables government to assess the results of forest practices, identify potential contraventions of the Code, and initiate compliance and enforcement actions. Weaknesses in inspections reduce government's ability to appropriately enforce the Code.

The audit assessed whether government's inspections covered a reasonable proportion of parties engaged in forest practices, important resource features and different geographic areas. The audit also assessed whether the number of inspections conducted was sufficient, and whether the inspections were properly planned and performed.

For harvesting and road construction activities, the audit confirmed that sufficient inspections were carried out and forest officials accurately observed and recognized the results of the activities inspected. Where applicable, follow-up requirements were properly tracked through to completion.

When necessary, forest officials initiated appropriate compliance or enforcement action to address situations of non-compliance with the Code. In a few situations, forest officials' concerns were communicated to the district manager, who issued formal notices to the licensees instructing them to comply with the Code.

Inspection documentation was complete and included details of the status of operations inspected, the specific area or location of the inspection, the practices inspected, the method of inspection and the compliance status of the practices inspected.

As described in the previous section, the audit identified deficiencies in inspection planning related to licensees' road maintenance activities and obligations. The planning deficiencies resulted in insufficient inspections of these activities.

Conclusions

The district conducted a sufficient number of inspections for harvesting and road construction activities, including reasonable proportions of parties engaged in forest practices, important resource features and geographic areas.

The district did not conduct sufficient inspections of licensees' road maintenance activities, including road inspections required by the Code to be carried out by the licensees.

Forest officials' inspections, including inspections of silviculture activities during annual audits, are performed effectively and adequately documented.

Formal notices to comply issued by the district manager were effective in achieving compliance without requiring formal determinations of non-compliance, and were used in appropriate circumstances.

4.4 Audit criterion – Investigations are conducted in all applicable situations and only when warranted. They are performed in a fair, objective and consistent way, and are accurately recorded and reported.

MWLAP and MOF forest officials have authority to conduct investigations of Code non-compliance. In practice, MWLAP forest officials do not take the lead in Code-related investigations, but provide expert support to MOF when requested. The MWLAP forest ecosystem specialist estimated that he had approximately three to five days per year (one to two percent of available work time) available for Code-related inspections or investigations.

MOF has an established investigation policy that reinforces MOF's objective that all alleged contraventions of the Code be investigated.

The audit confirmed that forest officials are appropriately initiating investigations for all alleged contraventions observed. One notable exception was observed.

In the one exception, a forest official had observed tension cracks on a forest road and made a notation in the inspection report that the licensee needed to inspect the road for remedial work. However, an investigation into the licensee's inspection and maintenance activities on the road was not initiated. The Board's compliance audit, more than a year later, identified that the licensee still had not undertaken road inspections at an appropriate frequency, and that repairs to the road had not been carried out as required by the Code.

The adequacy of documentation associated with investigations varied. For those contraventions where forest officials determined that the magnitude of the contravention warranted a determination of non-compliance by a senior official, documentation was

comprehensive. For those contraventions addressed by forest officials through compliance actions or violation tickets, the level of documentation was not always sufficient to support the reasonableness of the forest officials' decisions. Further information on the basis of forest officials' decisions is required.

The timeliness of investigations also varied. For contraventions addressed by forest officials, the investigations were generally completed within a reasonable period of time, typically within a few months. For more serious contraventions, investigations are more complex and require more time to complete. However, the audit identified a few investigations that had been ongoing for more than a year and, notwithstanding the increased complexity of the investigations, were not completed within a reasonable period of time.

In one case, related to an investigation into the construction of approximately 200 metres of road within the riparian reserve zone of an S1 stream, it took more than two years to complete the information package to be presented to the senior official for determination.

In another case, the district indicated that a forest official was using compliance techniques to address immediate dangers that were created when a road failed because a licensee chose to vary the design on a high-risk section of road to allow for the inclusion of some potentially cheaper alternative road construction methods. Once addressed, the forest official intended to proceed with a senior official determination. However, after approximately 17 months, the investigation was not complete and there was still a significant risk to the public and the environment from the unstable road.

In both of the above situations, the alleged contraventions and any right of government to pursue remedial actions through enforcement means have now been "stayed" as a result of the bankruptcy of the licensee. However, more timely completion of these investigations may have afforded the senior official the opportunity to make determinations about the alleged contraventions and order any remedial works required.

MOF's investigations policy does not establish an adequate standard for the timeliness of investigations. The policy simply states:

> "where it is determined that a contravention may have occurred, the investigator must gather, in a timely fashion, sufficient information so as to ensure that the Statutory Decision Maker (senior official) can make an informed decision within the appropriate limitation period (3 years)."

The district also has not established a standard for the timely completion of investigations. One district forest official indicated that the district generally targets 30 to 45 days for completion of investigations, which was reinforced by C&E supervisors.

The district does not maintain a list of complaints received from the public, and their disposition.

Conclusions

MWLAP does not lead investigations of Code non-compliance.

With one exception, investigations by MOF were conducted where warranted.

Investigations about Code non-compliance are not being completed in a timely fashion.

MOF has not established an adequate standard for the timely completion of investigations.

More comprehensive documentation is required for investigations that conclude with a decision by forest officials, including forest officials' rationales for their decisions.

Documentation of complaints received from the public and their disposition would improve the district's ability to demonstrate that all complaints have been adequately addressed.

4.5 Audit criterion – Determinations are made in all applicable situations and only when required. They are performed in a fair, objective and consistent way, and are accurately recorded and reported.

There were no determinations of non-compliance with the Code by senior officials (MOF or MWLAP) during the period of the audit. However, two case files were brought before the Kispiox district manager for determination.

In one case, the information package prepared by the forest official was submitted to the senior official on May 10, 2001. The licensee informed the district in writing that it did not need a meeting prior to the district manager making his determination. On July 24, the licensee provided a nine-page written submission to the district manager addressing the alleged contraventions. On August 1, the district manager notified the licensee that he had reviewed the submission and would be making a determination on the basis of the evidence presented to him.

On September 12, the forest official submitted a rebuttal to the licensee's July 24 submission to the district manager. There was no further correspondence with the licensee until December 6, when the district C&E operations manager wrote to the licensee informing it of the forest official's rebuttal and requesting any further rebuttal from the licensee.

The licensee responded on January 3, 2002, notifying the district that it had initiated proceedings (bankruptcy protection) under the *Companies' Creditors Arrangement Act*, and that pursuant to an October 5, 2001, BC Supreme Court order, the determination process could not proceed until the order was lifted. The eventual bankruptcy and sale of the licensee served to permanently "stay" any right of government to pursue enforcement actions in this situation, and the file has therefore been closed.

The senior official had all available information respecting the alleged contravention by September 12, yet a determination was not forthcoming. When asked why a determination was

not made at that time, the district indicated that the licensee had gone into bankruptcy protection. However, the district was not aware of the bankruptcy protection proceedings until January 2002, approximately three months after September 12 and almost eight months after the forest official's submission to the senior official.

In another case involving the same licensee, a forest official completed an information package on September 24 for senior official determination. However, the district was not able to complete the opportunity-to-be-heard process prior to January 2002, when the licensee notified the district about its bankruptcy protection.

Conclusions

No conclusion is expressed about the performance of determinations, because there were none to examine.

Determination processes are not being carried out by the district in a timely enough manner. One determination was not forthcoming within a reasonable period of time by the MOF senior official.

MOF has not established an adequate standard for the timely completion of determinations.

4.6 Audit criterion – Agencies establish, through operational plan approval and related processes, expectations for forest practices which are enforceable and in accordance with the Code.

Until September 2001, MWLAP maintained a forest ecosystem specialist (FES) position in the Kispiox Forest District office. The FES's responsibilities included reviewing and providing comments to the MOF district manager on proposed forest development plans. The FES also reviewed site-specific plans where the plans were considered important to the protection of key environmental values.

In September 2001, the Kispiox FES position was moved to MWLAP's Smithers regional office. The FES indicated that his responsibility for FDP reviews continued, despite the changed office location. However, his workload was increased to include five forest districts in the region.

In practice, the consolidation of the FES position to the Smithers regional office was part of a major transitional period in MWLAP, during which the ministry removed itself from Code planning processes. At the time of the audit visit, there was a substantial backlog of reviews outstanding and, in February 2002, MWLAP had notified district managers in the region—including the Kispiox district—that MWLAP would no longer be able to carry out some Code responsibilities of the designated environmental official. In particular, the *Skeena Region In-Stream Work Windows and Measures* (July 1995) was revoked as a Code requirement (although encouraged as a best management practice). In addition, reviews by MWLAP of applications to vary the published windows and measures were eliminated, as were reviews of applications to carry out works in riparian reserve zones and reviews of all operational plans and permits.

Recent Code amendments have eliminated the requirement for joint MOF and MWLAP development plan approvals, and it appears that MWLAP's re-organization was consistent with current government direction.

At MOF, district pre-award staff have responsibility for the review of operational plans prior to district manager approval. The district has developed a system whereby the level of review of operational plans is reduced (or increased) for individual licensees once the effectiveness (or lack of effectiveness) of a licensee's planning has been demonstrated through plans submitted. The review procedures include field verification of key features in and around planned activities.

The district manager also establishes expectations for forest practices through letters of expectation distributed to licensees annually. The letters are specific and quite comprehensive.

Forest officials in the C&E program generally focus on the implementation of the approved plans, but provide feedback to pre-award staff regarding the enforceability of plans, when circumstances warrant.

The audit identified no operational plans that were not in accordance with the Code, and, with one exception, no situations where ambiguous or unenforceable plans resulted in inappropriate or ineffective enforcement.

The one exception relates to a lengthy investigation into a road constructed in a riparian reserve zone, cited previously. In this case, district C&E officials indicated that the lack of a clear and enforceable plan contributed to the significant delays in the investigation. The plan had been approved a considerable time prior to the period of the audit and, therefore, is not considered representative of current practices in the district.

Conclusions

MWLAP does not participate in the establishment of legislated expectations for forest practices through the operational planning requirements established by the Code.

The forest district is establishing clear and enforceable expectations for forest practices.

The forest district's system of field verification and varying review levels for operational plans is a strength of the district's processes for ensuring that operational plans are in accordance with the Code and appropriate.

4.7 Audit criterion – There should be organizational structures, policies and processes that contribute to and support appropriate enforcement of the Code.

Although MLWAP has established and communicated authority for Code enforcement, responsibility and clear objectives for the enforcement function have not been developed.

MOF has established a C&E program in the Kispiox district that is separate from the district SBFEP and other district responsibilities, except for silviculture activities that are enforced through annual audits by the silviculture officer.

The district has implemented monitoring and supervision processes to oversee the work of forest officials, without compromising or fettering forest officials' authority under the Code. These processes include weekly prioritization of C&E activities and monthly C&E staff meetings.

The forest region and the district have developed procedures that address the inherent conflict of interest that district managers have in enforcing activities for which they are also responsible. The procedures include reporting to the region and periodic regional audits. The audit confirmed that studies and quality assurance reviews conducted by the region have contributed to appropriate enforcement of the Code.

MOF's C&E branch has established an intranet site containing relevant policy and procedural direction, as well as Code bulletins and other information to support forest officials in fulfilling their Code enforcement responsibilities. The branch has also established minimum training requirements and curricula for staff involved in the C&E program, and continues to deliver the required training.

The audit identified one forest official who had not undertaken basic law training, which is required minimum training for forest officials. The audit did not identify any instances where the deficient training led to inappropriate compliance and enforcement of the Code.

Conclusions

No conclusion is made about MWLAP's organizational structure because MWLAP does not participate in Code enforcement.

The organizational model adopted by the Kispiox Forest District is appropriate for compliance and enforcement of the Code.

Except for standards related to the timeliness of investigations and determinations, sufficient policy and procedural direction exists, both at the ministry and district levels, and authority and responsibility within the C&E program are defined and understood.

Minimum training requirements for staff involved in the C&E program have been identified and applied. However, one forest official had not received the minimum training required.

Senior staff adequately supervised forest officials' work.

4.8 Audit criterion – The decisions and actions of different parts of government responsible for enforcement of the Code are appropriate and coordinated.

Despite inter-ministry and regional memoranda of understandings that envision joint and coordinated C&E processes, the MOF and MWLAP work predominantly in a mutually exclusive manner. The applicable memoranda have not been updated since 1995/96, are now outdated, and the processes and systems described therein are no longer applied.

In practice, MOF takes on the full responsibility for Code enforcement.

Conclusions

The decisions and actions of MWLAP and MOF are not coordinated.

4.9 Audit criterion – Reporting systems provide adequate information on agency performance in relation to enforcement objectives.

MWLAP's Code C&E activities do not include performance reporting.

MOF's stated objective for the C&E program is to promote compliance with the Code. Annual targets for the number of inspections to be performed and the rate of compliance have been established by the district, and are tracked each year. This information is not sufficient to adequately assess performance.

The results of C&E activities, and achievement of program objectives, have not been assessed or reported publicly by the ministry since March 2000. The C&E branch is in the process of updating the MOF performance measures for its C&E program.

Conclusions

The forest district has not tracked or reported sufficient information about performance of compliance and enforcement in relation to program objectives.

Public reporting by the ministry of its C&E program performance requires improvement.

Initiatives are underway at the C&E branch that address ministry performance measures for the C&E program.

5.0 The Bankruptcy and Sale of Skeena Cellulose

On January 3, 2002, Skeena Cellulose Inc. (SCI) notified the Kispiox Forest District that it had received bankruptcy protection under the *Companies' Creditors Arrangement Act*, and that, pursuant to an October 5, 2001, BC Supreme Court order, any determinations of non-compliance with the Code could not proceed until the order was lifted.

The ensuing bankruptcy and sale of SCI in April 2002 involved substantial negotiations between government and SCI's purchaser. The eventual terms of the transfer served to permanently "stay" any right of government to pursue enforcement actions for contraventions of the Code that occurred prior to October 5, 2001, and to extinguish all of SCI's obligations under the Code, except for obligations or contraventions related to silviculture reforestation.

The audit looked into the process undertaken by government during these complicated times. In particular, the audit sought to confirm that government had assessed SCI's past forest practices to identify any risks of adverse environmental impacts that might develop as a result of SCI not performing its Code obligations, and that any such risks had been appropriately evaluated, considered and addressed through the negotiation process.

In response, MOF indicated that government formed a cross-ministry team and developed a complex matrix of issues, which included Code obligations in the name of SCI and potential pending enforcement actions, for consideration in the sale negotiation. MOF further indicated that it made it clear to those negotiating on behalf of government that any outstanding Code obligations should be maintained to the extent possible. MOF did not provide specifics or documentation in support of its contextual response.

The audit confirmed that all obligations related to the regeneration and achievement of free-growing stands of trees for cutblocks harvested by SCI were transferred to SCI's purchaser. However, the negotiation resulted in agreement that all other obligations were extinguished, such as those related to SCI's road maintenance and deactivation, and any obligations that may have arisen upon senior official determinations of non-compliance with the Code on the part of SCI.

At the time of the audit, the Kispiox Forest District had eight investigations underway into alleged contraventions of the Code by SCI, most of which appear to have caused some level of environmental impact.

Conclusions

The bankruptcy and sale of SCI, including related court orders, hindered enforcement of the Code by the Kispiox Forest District.

The Kispiox Forest District was not involved in the negotiations associated with the sale of SCI.

The Kispiox Forest District was not informed of the status of ongoing processes, as they related to the bankruptcy and sale of SCI, or the implications of such proceedings on the district's C&E responsibilities.

The bankruptcy and sale of SCI served to permanently "stay" any right of government to pursue enforcement actions for contraventions of the Code that occurred prior to October 5, 2001, and to extinguish all of SCI's obligations under the Code, except for obligations or contraventions related to silviculture reforestation.

There remains a real concern that situations exist in which environmental risks created by SCI's past forest activities have not been sufficiently addressed.

Kevin Edquist, RPF
Auditor of Record
Victoria, British Columbia
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PO Box 9905, Stn Prov Govt
Victoria, British Columbia
Canada V8W 9R1

Phone: 250-387-7964
Fax: 250-387-7009
Toll free: 1-800-994-5899
E-mail: fpboard@gems9.gov.bc.ca

Information on the Board is on the
internet: http://www.fpb.gov.bc.ca